

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CHUCK SALEEN, EUGENE T. BROWN,
BRUCE ANDREWS, JULIE BORMES,
KYLE CHRISTENSEN, KAI
HENDRICKSON, MATTHEW
LEONETTI, RICHARD SARGENT,
TYSON TVINNEREIM, AND JOSHUA
WERSAL, individually, and on behalf of
all others similarly situated,

Court File No. 08-4959 (PJS/JJK)

**DEFENDANT’S MOTION FOR
ORDER FOR PROTECTION**

Plaintiffs,

v.

WASTE MANAGEMENT, INC.,

Defendant.

TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEYS OF RECORD

Defendant Waste Management, Inc. (“Defendant”), pursuant to Fed. R. Civ. P.
26(b) and 26(c) and L.R. 7.1 and 37.1 respectfully moves the Court for an Order for
Protection limiting the scope of discovery in this matter.

PROCEDURAL BACKGROUND

Plaintiffs initially sought to conditionally certify this matter as a nation-wide collective action under Section 216(b) of the Fair Labor Standards Act, potentially encompassing upwards of 30,000 current and former individuals employment by various of Defendant’s indirect operating subsidiaries. On June 15, 2009 this Court denied Plaintiffs’ motion for conditional certification and equitable tolling. [Dkt #147]. On July 15, 2009, Plaintiffs amended their complaint and added 8 additional named plaintiffs, all

of whom worked in Minnesota. [Dkt #172, Cmplt. ¶¶ 7-14]. Plaintiffs' amended complaint alleges violations of the FLSA and Minnesota Fair Labor Standards act, and seeks certification of a class of Minnesota-based employees, pursuant to Federal Rule of Civil Procedure 23, and conditional certification again of a nationwide class of waste hauling employees, identical to the class over which conditional certification was denied on June 15, 2009. [Id., ¶¶ 16-17]

On September 1, 2009 the District Court affirmed this Court's denial of nationwide conditional certification under the FLSA, and dismissed the claims of all opt-ins without prejudice, in order to allow such individuals to file their claims "in appropriate courts." [Dkt #195].

As set forth more fully in Defendant's supporting memorandum of law, the parties have been attempting to resolve certain issues concerning the appropriate scope of discovery. Plaintiffs are continuing to try to litigate this matter as a nation-wide class/collective action, and conduct discovery accordingly. Fundamentally, Defendant believes that discovery should be restricted to matters pertaining to the claims and defenses of *the parties*. The only remaining plaintiffs in this matter worked exclusively for Waste Management of Minnesota, out of Minnesota-based facilities. Defendant has agreed to produce a number of witnesses to address deposition topics identified by Plaintiffs, pursuant to Fed. R. Civ. P. 30(b)(6), as those topics pertain to named Plaintiffs and the facilities in which they worked. Defendant has sought certain limitations on other individually-noticed deposition testimony, consistent with these limits. Plaintiffs have refused to so limit their discovery.

RELIEF SOUGHT

Defendant seeks an order:

1. Prohibiting plaintiffs from conducting nationwide discovery regarding facilities and claimants outside of Minnesota and, conversely, limiting discovery in this matter to testimony, documents, and evidence concerning facts and circumstances surrounding named plaintiffs' claims.
2. Specifically, prohibiting plaintiffs from pursuing deposition testimony from Defendant witnesses regarding facts and circumstances outside of Minnesota, and the facilities in which named plaintiffs worked.

This Motion is made on the grounds that discovery outside the parameters set forth above is inconsistent with Fed. R. Civ. P. 26(b)'s limitations on discovery, as set forth further in Defendant's supporting memorandum of law, filed in accordance with the Court's rules, and upon all the files, records and proceedings herein.

Date: September 14, 2009

s/ Noah G. Lipschultz

Marko J. Mrkonich (#125660)

Andrew J. Voss (#0241556)

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